DOCUMENT RESUME

ED 305 723 EA 020 825

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TITLE Community Values and Unconventional Teacher Behavior: A National Canadian Study (1945-1985).
INSTITUTION Social Sciences and Humanities Research Council of Canada, Ottawa (Ontario).
PUB DATE Mar 89
NOTE 35p.; Paper presented at the Annual Meeting of the American Educational Research Association (San Francisco, CA, March 27-31, 1989).
PUB TYPE Information Analyses (070) -- Reports - Research/Technical (143) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Community Attitudes; *Community Characteristics; *Community Influence; *Community Involvement; Elementary Secondary Education; Foreign Countries; *Teacher Behavior; Teacher Discipline; Teacher Dismissal
IDENTIFIERS *Canada

ABSTRACT

This study focuses on the tension between community norms/values and teacher behavior in Canada. A series of instances where teachers in public or denominational schools are accused of misconduct are presented, and these instances are traced from their beginnings to their ends (that is, to the resolution or acceptance of the social conflict). Part I discusses the research approach, the social relevance of the project, and the methods and procedures. Part II describes the instances of misconduct gathered to date from British Columbia, Alberta, Ontario, and the Atlantic Provinces. Part III offers tentative interpretive comments: (1) community pressure does sometimes exist, but is very much muted by the Board of Reference decisions; and (2) the predominant value seems to be respect for and obedience to authority. Reasons for teacher dismissal are also summarized. Appended are 22 references, a classification of contentious teacher behavior, and a list of seven research project publications. (SI)

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Community Values and Unconventional Teacher Behavior: A National Canadian Study (1945-1985)*

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PART I: THE RATIONALE FOR THE STUDY

The starting point for this study is the recognition that at root schools are cultural institutions and teaching a cultural activity. So when teacher behavior offends community norms rancorous conflict frequently erupts violently and tumultuously around the offending behavior. These conflicts and their analysis form the focus of this study. In particular, the study focuses on the tension between community norms, values and teacher behavior, and involves the collection of a series of instances where teachers in public or separate (e.g. denominational) schools are accused of misconduct, and the tracing of these instances from their beginnings to their ends, namely, to the resolution or acceptance of the social conflict represented by these disputes.

Disputes such as these are not at all simple. They occur at the intersection of education and law, and involve questions of public policy, community standards, professional standards, civil rights, social change, and cultural conflict. These questions can be very acute. What starts as a disagreement between a teacher and someone else such as a principal, a school trustee, or a parent, can become a bitter contention going from school board hearing to Board of Reference to trial court to appeal court to the Supreme Court of Canada, drawing more and more people into its vortex and changing its character as it proceeds. The outcome may please no-one, and may leave seriously bruised lives and careers behind it.

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*Paper presented at AERA 1989, San Francisco. The research reported here is the first year of a three year study funded by the Social Sciences and Humanities Research Council, Ottawa, Canada.

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One example of such a case is that of Margaret Caldwell, a Catholic teacher in a Catholic High School in North Vancouver, who married a divorced Methodist in a civil ceremony. The school subsequently refused to renew her contract and her -- ultimately unsuccessful -- challenge to this decision eventually reached the Canadian Supreme Court. (Parker-Jenkins & Osborne, 1985).

Such disputes, of course, are inevitable in complex societies where there are persons, such as public school teachers, whose professions or jobs place them in positions of trust and high public visibility. They are increased, however, when the high but uneven rate of social change generates further stresses and anxieties on the various actors of society, and also in societies where the presence of different cultural traditions and religious values poses disagreements concerning basic values in human life. Canada today, never a monocultural society, is both changing increasingly rapidly and becoming more multicultural than ever. Furthermore, as the several contributions in Manley-Casimir and Sussel (1986) have explored, Canada's new Charter of Rights and Freedoms (Constitution Act, 1982) provides a new resource on which disputants in such cases as these may now call. In particular, it raises the question to what degree the philosophy underlying the Charter is at odds with the philosophy behind the traditional role of teachers in the public schools.

Theoretical Anchoring

Both law and education are cultural enterprises devoted to the maintenance and promotion of a normative order in society, that is, of an ideal order or vision of the desirable. If that order already widely exists in the society, law and education are conservative and "traditional." If that order is followed only by a minority (albeit a minority influential or powerful) then law and education become reformist or even revolutionary. But in either instance, law sets up a set of rules

and ideals which those pupils are expected to learn and to follow, with rewards for successful learning and following, and penalties for failure so to do. Both, furthermore, are deliberate enterprises, at least in part, as in legislation which prescribes and sets out rules, and in curricula and behaviour codes which set out programs of education. Not only that, law depends on the acceptance of authority, and part of education's concern is to instil basic attitudes to authority (whether uncritical or critical depends on the particular content of education). Both laws and law-abidingness must be inculcated, and education in part at least inculcates them -- or is intended to do so.

Both law and education are supported by sanctions (cf. Piddocke, 1968), or rewards and punishments for compliance and non-compliance. The criminal sanctions of fine, imprisonment, and execution are only the most dramatic of the many sanctions of the law. Other sanctions of the law are the protections offered to property and civil rights, and the enablements offered by the law's recognition of contracts and associations. Education's sanctions are no less pervasive. Beyond the rewards of grades and prizes given students for good performance in school, as well as the sense of mastery and personal growth emanating from success in an academic discipline or from victory at sports, come credentials which pave the way for better jobs and promotion up the social hierarchy.

Law and education, then, are concerned with the maintenance and inculcation, respectively, of "collective representations" (to borrow the phrase of Durkheim, 1964) which model ideal behaviour. These collective representations express the fundamental values or postulates (cf. Hoebel, 1954) of the society, and some of these may be very deeply held indeed. Where these values, or more precisely, standards of value, are deeply held, their breach calls forth strongly emotional reactions which seek to punish the offender, often in a dramatic manner. And, such is the complexity of human nature, where these same deeply

held values are opposed in the same person by strongly repressed contrary motives, the breach of the ideal may call forth even more intense emotions, projected upon the offender but designed to defend the offended person's own character against his own contrary motives.

Law and education are not only shapers (to some degree) of human behavior, but because of this are resources which people try to acquire control over in order to advance their own purposes and also to defend themselves against others (cf. Nicholas, 1968). People try to win cases at law, using the power of the legal system to attack or defend particular interests. They try to have favourable legislation enacted and unfavourable legislation repealed. Similarly, they try to have students in the schools, whether their own children or other people's children, taught ideas and ideals conforming to the people's own purposes; and they try to censor ideas and ideals perceived as detrimental to those purposes.

The interplay between law and education entails that the two institutional domains cannot be sealed off from one another. Hence, law, and struggles in the legal order, can be aimed at controlling the educational order. And conversely, though perhaps less easily, education and struggles over educational policies and institutions, may be aimed at controlling the legal order. Note again that these self-same struggles, aimed at preserving or advancing particular interests, necessarily threaten to change other interests, and so foster further social change.

In a society where formal and public education is as important as it is in Canada, the teacher's role becomes an arena where all these struggles focus. The teacher deals directly with the students, and is expected to shape the students in a particular way -- in a word, to socialize them into a particular normative order. The teacher interprets and applies curricula -- and can divert curricula from their intended purposes. Consequently, those who would control education must control the behaviour of the teacher

The school administrator, the servant of a ministry of education, even the Minister of Education himself or herself, can each be largely background figures to the parents, largely unknown figures obscured by the institution of which they are a part. But the teachers on the "front line" of the institution, dealing directly with the students. If students complain to their parents and friends about their educational personnel, they will complain foremost about their teachers; and it will be the teachers that the parents hear most about. The teachers, that is, will mediate the educational system not only to the pupils but to the pupils' parents.

Teachers, it seems fair to say, are in North America expected to be role models for their students (cf. classic discussion in Waller 1965: 42-66). In the United States, at least, this expectation has been so strong that the British anthropologist, Geoffrey Gorer (1956: 331, 338) could propose that the public school teacher in the United States became both the prime authority figure for Americans and an ideal role model. (The equivalent figure for the English as a whole is Gorer suggested, not the school-teacher, but the policeman.) This expectation enhances the public position of the teacher, and intensifies the scrutiny which the teacher's behaviour, inside and outside the classroom, must bear. Like Caesar's wife, the teacher must be above reproach.

Hoyle (1969: 79-72), citing Baron and Tropp (1961), notes that a major difference between British and American teachers is that in Britain a teacher is considered a professional who is responsible primarily to the profession and the educational system, whereas in the U.S. a teacher is considered very much a representative of the community. One concern of the present inquiry will be the relative importance of these two ideals in Canada.

Consequently, the behaviour of teachers will become the occasion for the eruption of conflicts concerning the control of education, and we may expect that

the law will be brought in as a means of fighting and sometimes resolving these conflicts.

Research Approach

For analyzing such conflicts and disentangling the ideals and expectations and interests involved, the chosen method is that known as the study of "social dramas" (Turner, 1957: 91-94). This is a variant of the "extended-case method" and "situational analysis" (Van Velsen, 1967), already long familiar in social anthropology. Within the anthropology of law, a similar approach has long been followed in the analysis of "trouble-cases" (Hoebel, 1954: 29-65; Epstein, 1967).

According to Turner (1957: 91-94), the "social drama" is a recurrent social process taking four stages: (1) the breach of some important rule or norm governing the relationship between the persons who come into conflict; (2) widening crisis threatening the breach of more relationships; (3) redressive measures brought into action by leading members of the relevant social groups, with the purpose of stopping the disturbance; and (4) re-integration of the conflicting parties or else recognition of schism between them. This drama occurs through time, and shows, as alliances form and shift, the various persons and their values and interests involved. A series of them, either recurrent in the same particular group, or more widely spread over a larger group, highlights the structure of the group and reveals its mechanisms of integration and change. Turner's original studies concerned schism and continuity in small villages in north-west Zambia.

Pettigrew (1979) has adapted Turner's social drama to the study of ongoing organizational changes in private schools, and investment decisions in business firms. He observes:

(1) Each drama provides a clear point of data collection.

(2) Each drama can be an in-depth study within a larger case study.

(3) The longitudinal study of a sequence of dramas shows the development of an organization over time.

(4) The dramas show the contrast of change and routines.

(5) Examining dramas provides the opportunity to study continuous processes.

Social dramas, of which hearings and trials are special varieties, reveal also the symbolic nature of social interaction. The breach which initiates a drama, marks a disruption in an agreed definition of the situation. The arguments and postures put forward by the disputants are attempts to impose or persuade new definitions of the situation from which the fulfilment of the disputants' purposes logically follows. Hence the social drama approach both allows and invites the sociological approach known as "symbolic interactionism" (cf. Blumer, 1986).

Social dramas are interplays not only of meanings, but of the sanctions which confirm or weaken those meanings. The sanctions are responses to a person's actions which encourage or inhibit the repetition of those actions: but those sanctions depend for their effect upon the person perceiving them as rewards or punishments (Pildocke, 1968).

Social Relevance and Further Background

The role of the teacher, therefore, affords a critical place in society where social dramas may be identified and the conflicts of value in a changing society may be highlighted and described. These conflicts of value are not of merely academic interest. They affect concerns in educational policy and law reform, not to mention judicial interpretation of the Charter. This is well shown for the United States, which has itself had its Bill of Rights for nigh on two centuries, by the study by Stephen Arons (1986). Arons' book takes a number of notable cases

involving schools, teachers, school boards, and local communities, and teases out from these several distinct concerns. For example, there are: the struggle between state departments of education and parents to control the kind of education -- including textbooks and curricula -- which the children will be exposed to; the conflict of interest between public schools and private home instruction; the question of teacher lifestyles in conflict with school boards' and parents' expectations (sometime expressed under the rubric of community standards); conflicts between state requirements and the desires of minority or dissident groups to have a different education for their children; and a conflict between individualist assumptions in the U.S. Bill of Rights and the majoritarian assumptions (fearing dissent) institutionalized in the various public school systems.

The Canadian situation is different from that of the U.S. (Manley-Casimir, 1982). Denominational education is, for instance, constitutionally supported in Canada in contrast to the strict separation of church and state in the U.S. The Canadian Charter of Rights and Freedoms is much more recent than the U.S. Bill of Rights, and its selection of rights is not the same. Canadian jurisprudence on rights and the constitution has a different history, and comes to somewhat different conclusions than U.S. jurisprudence. Canadians have different attitudes to authority (Friedenberg, 1980). And so on.

But nonetheless there are similarities (compare discussions in Manley-Casimir and Sussel, 1986 with the account in Arons, 1986). Work needs to be done to discover both the similarities and the differences, in order that Canadian jurists, educators, and policy-makers can make wise and proper use of American precedents, either as sources of good ideas or as horrible examples better not followed.

Although education in Canada is a provincial concern, and the particular educational traditions of each province differ from one another, the cultural conflicts which make teachers' "lifestyles" an issue are national in scope. Beyond very brief references in recent reviews of school law in Canada (Mackay 1984: 265-274; Hurlbert and Hurlbert, unpublished ms: 269-278), there are no national studies of the control of teachers' "lifestyles". Czuboka's (1985) crisp and practical study of teacher tenure cases is precisely a study of Manitoba cases (1965 - 1985) which passed beyond the board of arbitration level to reach the courts, and contains only one Manitoba case which by stretching can be considered as involving "lifestyle". Some cases elsewhere in Canada are also considered by him, and again only one of these is a "lifestyle" case. And yet, the Charter provides both a national framework for "rights" and a nation-wide resource in the struggle to define and enforce those rights. Further, only a nation-wide review can distinguish what is peculiar to provincial traditions from what is common to them all. Finally, it is simply time to conduct some genuinely 'national' studies of educational policy and practice in Canada. The tradition is well established in the U.S.; if we in Canada are serious about being considered a 'nation', we need to conduct research into one of the central cultural institutions that shapes our identity -- education and the practice of teaching.

The detailed examination of teachers' "lifestyle," where law and education intersect, is relevant to law-makers and policy-makers. At the very least, the complexity of the issues and interests at stake needs to be clearly revealed so that the decisions of boards of reference, administrators, and legislators may be better informed. In addition, the study will yield substantive guidelines on the appropriate grounds for the dismissal of teachers where lifestyles are at issue; such guidelines will inform administrators confronted by issues involving teacher lifestyle and possibly be useful to those called upon to adjudicate these conflicts.

Method and Procedure

The study proposed, therefore, to locate and collect a variety of instances of conflict focussing on the role of teachers, and to select from this collection a number of cases for detailed analysis as social dramas. The eventual inquiry would be national in scope. The overall inquiry falls into the following stages, which may well overlap.

Stage one: Inventory and classification: identify and obtain, first for B.C. and Newfoundland and later for the rest of Canada, decisions by Boards of Reference and by courts, transcripts of these hearings and trials, and any additional documentation which may be fairly readily available, back to about 1945.

Preliminary inquiries reveal that each provincial jurisdiction has different procedures for controlling teachers' behaviours, as well as different structures of public and denominational schools. Ontario, at one time, seemed to be the only province, for example, to publish (some) results of board-of-reference decisions. B.C. does not publish its board-of-reference decisions. Alberta does not have boards-of-reference, but does have a Teaching Profession Appeal Board (Bercuson and Wertheimer, 1987, p. 121). According to Czuboka (1985, p. 197), teacher tenure cases are heard by boards variously named "boards of reference," "boards of arbitration," and "boards of appeal," which in Alberta, New Brunswick, and Nova Scotia comprise one person only, but elsewhere in Canada comprise three persons. And so on. These various differences imply that each provincial jurisdiction must be treated as a distinct data universe.

The initial search was to be conducted in B.C. and Newfoundland because of the respective locations of the investigators and develop heuristic procedures for identifying, locating and analyzing decisions and other documentation; and these procedures were then to be applied to the other provinces and territories in Canada. These initial inquiries were thus both pilot studies and parts of the larger

national project. The goal of the first stage was a complete inventory of Board of Reference decisions, or their equivalents, in the various jurisdictions. This seemed prerequisite to any meaningful sampling.

A tentative classification scheme is given in Appendix One. This scheme extends and systematizes themes existing in prior literature, but is nonetheless new: previous schemes are ad hoc assemblages providing tables of contents for books. The present scheme is intended to subsume all cases concerning conflicts between teachers on the one side and community members or schools and school boards representing these members on the other hand; it deliberately excludes cases involving behaviours directly related to teachers' fulfillment of official duties as part of their teaching appointments, for example, such issues as negligence, malpractice, or incompetence, for which a school or school board together with the teacher may be held liable. The present scheme concentrates on those situations where (a) the school is the bearer and enforcer of community ideals, and (b) the school and community (or a substantial part of the community) are aligned against the teacher who goes against these ideals.

Stage two: Selection and examination: select for further examination a number of instances which seem to highlight in interesting ways the ideals in conflict, and investigate these cases ethnographically as social dramas.

Stage two will involve the interviewing of principal actors in the events examined, and the examination of archival material if necessary. It will include study of the social, cultural, and community backgrounds to the disputes which arose, and will try to set each dispute as fully as possible in its context.
Cases will be chosen for detailed study which promise to shed light on as many of the themes in the classification scheme as possible.

Stage three: Analysis and comparison: analyze and draw out the motifs and the structures of the conflicts involved. And, if the data permit, developing a

general model of the conflicts and the options open to the actors in such dramas; and at the same time, illuminating and contrasting these with similar occurrences in the United States.

Stage three, of course, overlaps and arises within both stage one and stage two. It will propose further questions requiring further examination of documents and interviewing of informants.

Stage four: Interpretation and conclusion: finally digest and interpret the results, and report the inquiry in a book describing the interplay of law and education as these bear especially upon Canadian teachers.

Questions may be raised concerning the reliability and validity of this procedure. Stage one, both in its pilot phase in B.C. and Newfoundland and in its fuller phase across Canada, was intended to locate and obtain all the available decisions and transcripts. No questions of sampling therefore arose at this stage. The only questions that could arise are two: has all the material in fact been gathered? and, do the cases which have emerged adequately reflect the deeper social processes which presumably gave rise to the cases? If the heuristic developed in the pilot project, where the results of particular enquiry procedures can fairly easily be checked by follow-up by the researchers, proved complete, then we argued, it would probably be extended with fair confidence to the rest of Canada: that answers the first question. The second question cannot be answered in stage one. Its answer lies in part in stage two, and in part in enquiries beyond this particular project.

Stage two, as respects reliability and validity, contains its checks within itself. Ethnographic method requires that as many persons involved in the social drama be interviewed as is possible, and that where possible what they say be recorded in their own words. Testimony of various actors can then be compared for consistency or inconsistency. This is further amplified and controlled by

documentary material. Diversity of information provides the control for reliability within each social drama.

PART II: WORK TO DATE

What has been done, and found, so far?

(1) British Columbia:

Thanks to the help of the provincial Ministry of Education, we have a complete list of Board of Reference decisions for the province of British Columbia from 1973 to 1987. During this time there were a total of 56 appeals. Of this total, 16 were abandoned by the teacher prior to the hearing, one was abandoned during the hearing, and three hearings were still pending as of May 1988. Therefore, during the 15 years from 1973 to 1987 inclusive a total of 36 decisions were made by Boards of Reference in B. C. This seems to be the complete number to 1987, as prior to 1973 there seems to have been no provision in B. C. for Boards of Reference. From 1973 to 1987, the responsibility for administering and arranging Boards of Reference was with the Ministry of Education, and records of Boards of Reference appeals (made according to the School Act, were kept by the Ministry as part of the records concerning the teachers' qualification and certification. In 1988, the provincial government passed a new Teaching Profession Act, and passed responsibility for teacher certification and professional standards to a new College of Teachers. The teachers' records in the Ministry were passed to the new College. In keeping the Board of Reference decisions with the teachers' files, the Ministry kept a good deal of background material together with the actual decisions. Our field researcher, Stuart Piddocke, was able to view this background material as well as the Board of Reference decision itself, and also to appreciate the development of the Ministry's procedures for administering Boards

of Reference. It should be noted that the records were made available to our researcher on the understanding that the privacy of the teachers and school boards and, most importantly, the children involved would be strictly respected. Eighteen of the thirty-six files which involved Board of Reference decisions, or 50%, were examined.

The results of the B. C. enquiry are set out in Michael E. Manley-Casimir and Stuart Piddocke, Research Report: Teachers' Misconduct and Board of Reference Decisions: The B. C. Scene, Vancouver, B. C., August, 1988. The following summary is based on the discussion and conclusions in this report.

What do the 18 cases examined in detail tell us about how "misconduct" is defined and dealt with, and especially about the role of community values in shaping the definition of misconduct?

Three cases form a rather neat set concerning the problem of teachers dating or becoming sexually involved with students of the opposite sex, specifically male teachers with female students. The gist of these cases is that teachers simply ought not to develp sexual relationships with their students, even if they intend marriage, and that this prohibition extends beyond students in the classes taught by the teacher, or in the school where the teacher teaches, to any student in the school system where the teacher is employed. On the other hand, if teachers develop such relationships with former students who are no longer in the school system, then the affair may not be misconduct.

These three cases have, however, a further complication. They each involved a man who was or had been married. One case involved a man who was married at the time and whose marriage was (apparently) not breaking up; another involved a man whose marriage was breaking up; and the third case involved a man whose marriage had already broken up. The first two cases, therefore, contained a flavour of adultery; and this, insofar as it might go against

community values, might have in itself provided grounds for an assessment of misconduct. The rationale would run as follows. The teacher is expected by the community to be an exemplar of moral virtue, obedient to standards to a degree higher than that expected of the ordinary person. When a teacher falls below this standard, his or her fall casts doubt on the teacher's fitness to perform and hold the job of teaching children, and upon the reputation of the school board which continues to employ such a teacher. It is the duty of the school board to protect the good reputation of, and public confidence in, the school system and the school board. So anything done by a teacher which could undermine, or even just tend to undermine, that image and reputation, could be misconduct, entailing suspension or dismissal if it be serious enough.

The rationale of maintaining the reputation of the school board can be seen at work in the other cases besides these three. It emerged quite openly in five more, including especially case number 18. In 18, "The Teachers Who Published in *Gallery*", the requirement that teachers maintain the reputation of the school system by respecting community standards was made quite explicit by the Board of Reference minority decision and by the courts, even though it was never made clear how these community standards are to be ascertained. In number 16, "The Teacher Who Wrote a Letter", destroying local confidence in the school administration was recognized as grounds for a judgment of misconduct.

The three cases involving sexual relationships with students also imply but do not spell out the idea that teachers are in a position of trust vis-a-vis their students. We might call this a "fiduciary relationship". Teachers ought not to act in ways breaking this relationship. The District Superintendent and the School Board in case 1 were, though in a muddled way, reaching out for this notion of a fiduciary relationship. A teacher's entering a sexual relationship with a student threatens to betray this fiduciary relationship. In case 2, the Board of Reference

was concerned to note that neither teacher nor student was taking advantage of the other.

This fiduciary relationship is not the same as the fact that the teacher is in a position of authority over the student. But the fact of this authority does give the fiduciary aspect part of its character.

Another three cases (4, 5, and 6 in the report) concern the possibility of child abuse, including sexual abuse, by teachers. (In cases 1, 2, and 3 the students were willing co-actors.) They also connect with the issues of over-severe discipline, excessive force, and abusive language which were raised also in three other cases. Their message is clear. Touching, sexual or otherwise, which makes children uncomfortable, excessively severe discipline, and abusive language are all prohibited, and comprise serious misconduct. This prohibition applies to teachers not only in school, but also to any other behavious which may reveal in those teachers a disposition to violence or cruelty which would make the teacher a poor riske for a custodian of children.

There is, however, also a hint in these cases of a growing taboo against touching and physical contact. In two cases, the teacher was adjudged innocent of misconduct, and of any intention to harm or embarass students, but his behaviour was regarded as undesirable nonetheless by the Board of Reference.

Four cases show the interplay of criminal charges and convictions with misconduct. Teachers must be exemplary in their law-abidingness, and if they falter in this, may face dismissal for misconduct. The statute gave school boards the powers to dismiss for misconduct and to dismiss for conviction on a criminal charge. A conditional discharge, deeming the conviction never to have occurred, can not justify dismissal on the second ground, but would not bar dismissal on the ground of misconduct. This is the lesson of three cases.

Two cases illustrate another aspect of "misconduct" proceedings, namely the aspect of "double jeopardy" (or even "triple jeopardy", as one writer in the files put it). If a teacher is dismissed for acts of misconduct which also give rise to criminal charges, and is found guilty, the teacher is faced with: (a) the criminal sanction, such as fine or imprisonment, passed by the court, and the public opprobrium which goes with it; (b) the job sanction of dismissal for misconduct or for criminal conviction, passed by the school board; and (c) perhaps even the occupational sanction of the Ministry's suspending or cancelling the teacher's certificate.

One case highlights another problem of "double jeopardy". What happens when the Board of Reference decides that there has been misconduct, and (on substantially the same evidence, interpreted differently) the criminal court decides that the alleged crime has not been committed and that the accused is innocent? In this case, as a result of the inquiry and the allegations, the accused teacher lost his job, had his reputation severely damaged (thus threatening his continuing in his profession), suffered a marriage break-up, and suffered considerable financial loss, already before the criminal trial adjudged him innocent.

Another form of misconduct revealed by these cases might be called simply "insubordination", whether this be shouting unpleasant accusations at the principal in public or merely failing to follow administrative guidelines and procedures of various kinds laid down by higher authority. This theme appears clearly in four cases, and runs in the background of a fifth case as well. Insubordination, especially if persistent, is not excused by maladministration by the school board or other administrators. In one case, though the Board of Reference commented severely and adversely on the school adminstration's acts, the Board still found that the teacher's dismissal was justified. Teachers are

expected to show a due deference towards authority, especially towards the authorities which employ them.

The notion of "misconduct" which has been applied by the Boards of Reference in these cases, has (not really surprisingly) been the idea of misconduct in the law concerning employee discipline. The Board of Reference in one case referred to teaching as a "profession", but the idea of misconduct which it followed was still that of the law of employee discipline rather than professional discipline.

(2) Alberta:

The results of our enquiry in Alberta are contained in Stuart Piddocke, Research Report: Teachers' Misconduct and Board of Reference Decisions: The Alberta Scene, Vancouver, B.C., 13 February 1989. The Alberta scene is appreciably different from British Columbia. For instance, Board of Reference appeals go back in Alberta at least as far as 1959, according to the records of the Teacher Certification and Qualification Branch of the Ministry of Education. During 1959-1983, a total of 196 appeals were made, though only 58 (or 30%) of these reached actual hearing and resulted in a Board of Reference decision. During November 1983 to October 1988, an additional 81 appeals were made and completed either by withdrawal of the appeal or by a Board of Reference hearing and decision. Of these, 24 (or 30%) were decided by a Board of Reference and one was recorded as being one in which the judge of the Board of Reference declined to give judgement because the progress of events had abolished his jurisdiction in the matter and made a decision unnecessary.

In Alberta, teachers' behaviour or conduct are presently governed by three procedures. The first is the discipline procedure of the Alberta Teachers' Association, which concerns allegations of "unprofessional conduct". The A.T.A.

gains this power under the Teaching Profession Act, and has enjoyed it since 1935. The second procedure is the "practice review procedure", established by recent legislation and still largely untested. Administered by the Ministry of Education and the Council on Alberta Teaching Standards, this is concerned with allegations of incompetence. The third procedure is that of appeal to Boards of Reference, administered by the Teacher Certification and Qualification Branch of the Ministry. These appeals may be made by teachers from three acts by school boards: termination of the teacher's contract of employment, termination of the teacher's designation as principal or similar administrative functionary, and suspension of the teacher.

The field researcher examined the summary files of the Branch, and the summaries of the appeals for the 1983-1988 period. Unlike the B.C. procedure, the Alberta appeal files are not interfiled with the records of the teachers' certification and qualification (although were it necessary to cross-check, the Branch could certainly do so very quickly). A standard form presently exists for recording, very efficiently, the progress of any appeal for a Board of Reference; but this form does not seem to have existed before late 1983. This form includes a note concerning the reasons given by the school boards for their actions.

(It should be noted that the Alberta legislation providing for Boards of Reference requires school boards to act reasonably, but does not prescribe "misconduct" as one of the grounds for termination of contract or designation. The B.C. legislation, on the other hand, did not require that the school board act reasonably, but did prescribe misconduct as one of the grounds for suspension or dismissal.)

Several reasons were given by the schools boards to justify these terminations and suspensions. In some cases, but not in all, the teacher's behaviour was relevant. Sometimes more than one reason, or more than one kind

of reason, applied. The most frequent concerns were staff reductions due to financial stringencies, and the competence or incompetence of teachers and administrators in their respective tasks. Other concerns, however, were also indicated. The notion that teachers are role-models appeared overtly in some of the reasons, and may be plausibly inferred in others. A concern by the school board for the reputation of the school in the community also surfaced. These reasons were:

1. With reference to terminations of contract:

(a) In 23 cases, school boards gave as the reasons for the termination staff reductions, redundancy, declining enrollments, abolition of the position, surplus to system, reduction of teaching time, or lack of suitable teaching position. (4 more appeals mentioned that the contracts had been terminated because of financial difficulties: these were at a native Indian school, and the Branch had no jurisdiction in this matter.)

(b) The next largest group, 12 cases in all, justified termination of the teacher's contract on the grounds of incompetence, unsatisfactory teaching service, unsatisfactory classroom performance, or failure to meet expectations in teaching.

(c) 5 terminations were justified by the teacher's alleged insubordination, disobedience, neglect to obey orders, or lack of cooperation with colleagues.

(d) 5 terminations were justified by what we might call "disabling conduct" by the teacher -- namely, acting in such a way as to make himself/herself unable to teach properly or to carry out whatever duties were required. Such conduct comprised being absent without leave (1), becoming permanently disabled (1), having an alcohol problem (1), attending school under the influence of alcohol (1), and making oneself unavailable for work at another school after one's position at one school was abolished (1).

(e) The use of excessive force and unacceptable methods of disciplining students was cited in one case, and physically assaulting a student was cited in a second.

(f Sexually touching students, or having sexual relations with students, were offered as reasons for termination of contract in four cases only.

(g) Finally a mixed bag of other grounds comprised the following:

Adopting a life-style incompatible with canon law and the moral values of the school (1).

At a Roman Catholic school, declaring oneself no longer a Catholic (1).

Theft of school funds (1).

Alleged untruthfulness (1).

At a party, smashing one of the other guests in the face with a bottle, thereby impairing the reputation of oneself and the school in the regard of the community (1). (This appeal was withdrawn before it reached a Board of Reference hearing.)

Conflict between elected status as Member of the Legislative Assembly and the job (1).

Conviction of a criminal offence (1).

2. Concerning terminations of designation:

(a) 6 termination were made on the grounds that the position had been abolished, especially due to retrenchment.

(b) 5 terminations were made on the grounds of the appellant's poor administration, which was described in various ways.

(c) Other: conflict with M.L.A. status (1).

3. Concerning suspensions:

The three cases here all involved sexual behaviour. In one case, the teacher was declared to be inappropriate to serve as a role model, having pled

guilty to gross indecency, and also having misrepresented information concerning his references. In the second case, the teacher admitted to having sexual relationships with students. In the third case, the teacher was alleged to be overly affectionate towards female students.

This gives us a fairly complete view of the alleged occasions prompting the action by the school boards which in turn prompted the teacher to appeal for a Board of Reference. But the summaries do not fully reflect the issues raised at the hearings or discussed by the judges in their decisions. The field researcher examined a total of 10 Board of Reference decisions, 8 from the 1983-88 period and 2 earlier. All of these ten were to be found both in the Branch's files and in the files of the Alberta School Trustees Association.

In only one of these ten cases was there a conflict between the teacher and a substantial majority of the local community. In this case, the school board terminated the teacher's contract on the grounds that the position was redundant. The parents of a significant number of pupils had forbidden their children to attend the teacher's class becuase of something which was quite legal for him to do but which had displeased many persons in the community, and the school board had therefore cancelled the class. In this case, the school board was reprimanded by the judge for giving in too easily and perhaps too meanly to the demands of the community. In another case, the judge distinguished between public indignation and an expression of concern by a minority, and told off the school board for too easily mistaking these. In a third case, the "community" was the local population of Roman Catholic parents and students who supported the school, and there was clearly a conflict between the teacher's behaviour and the values which that constituency and the school declared for. These values, however, were set out in advance in the school policy, and adherence to them was an overt condition of employment.

School boards may consider themselves as agents of the community, and may react quickly to expressions of concern. These Alberta Board of Reference cases suggest, however, a legal pressure from the Boards of Reference upon school boards not to react too quickly, and not to mistake the noisiness of a few persons for the indignation of the majority.

(3) Ontario:

Preliminary enquiries have begun concerning the Ontario situation. This again is different from both the B. C. scene and the Alberta scene. Board of Reference appeals have existed in Ontario since 1938. With the development in later years of collective bargaining between teachers' associations and school boards, and the writing into collective agreements of grievance procedures which teachers may also use, grievance procedures have emerged as an alternative to appeals to Boards of Reference, and grievance appeals fall under the law of labour arbitration, which is not quite the same either as the developing jurisprudence concerning Boards of Reference or the master-and-servant law which preceded both labour law and Boards of Reference.

A history of the Ontario legislation is provided by Joseph St. Clair Waters, Boards of Reference in Ontario: Resolving Teacher-Board Contract Termination Disputes, Unpublished D. Ed. dissertation, University of Toronto, 1981 [1982]. In this dissertation, Waters also summarizes and analyzes 41 Board of Reference decisions (all anonymous) handed down from 1972 to 1980. On the basis of these summaries, only 10 of these decisions can be construed as touching the contentious behaviors enumerated in Magsino's classification. From Waters' summaries, furthermore, none of these decisions apparently engaged the community either for or against the teacher.

The kinds of contentious behaviours according to the Magsino classification represented in these cases are as follows:

Insubordination or contrary-minded behaviour: four cases.

Behaviour showing signs of cruelty (whether physical or mental): three cases, all involving students.

Dishonest behaviour: one case.

Seduction of, sexual advances towards, and dating students: one case (in which the teacher was held to be innocent of the allegations).

Unauthorized teaching activities: one case (reference to expounding in class at length views on matters not part of the course of study!).

Public activity as citizen: one case (concerned leave of absence to serve as a Member of Parliament).

The greater number of cases concerned procedure (such as whether natural justice had been given), whether or not a contract had been entered into, and dismissals for incompetence.

A preliminary visit has been made to Ontario, and a second visit is proposed.

(4) **The Atlantic Provinces:**

A survey of procedures in Newfoundland, Nova Scotia, New Brunswick, and Prince Edward Island, and a collection of relevant cases has been made as part of our study by Romulo F. Magsino, Compelling Teacher Behavior: A Study of Conflicts and Resolution Mechanisms in the Atlantic Provinces, Winnipeg, Man., 1988. Magsino's paper lists the following cases and types of behaviours for these four jurisdictions:

1. *Nova Scotia*: five Board of Appeal cases, involving respectively: (a) alcoholism; (b) insubordination, lack of self-control, and use of physical force on

students; (c) application of force on student; (d) application of force on student; (e) sex-related behaviour (charge of sexual assault on stepson).

2. *Newfoundland*: six Board of Arbitration cases, involving respectively: (a) insubordination, undermining school board policy, and use of abusive language; (b) gross misconduct inappropriate to teacher (encourgaging parental picketing of school); (c) criminal behaviour, gross misconduct, and insubordination (impaired driving, and threatening others with criminal allegations); (d) marriage outside the church (this involved denominational rights); (e) marriage outside the church; (f) marriage outside the church and loss of church membership (involving denominational rights).

3. *New Brunswick*: seven Board of Arbitration cases, involving respectively: (a) use of profane language and physical force; (b) profane language; (c) dishonesty (principal forging a teacher's resignation letter); (d) conduct resulting from alcoholism; (e) use of physical force on students; (f) sexual harassment of students; (g) criminal conviction (assault), which was subsequently quashed.

4. *Prince Edward Island*: no Board of Reference cases. However, there was a case involving public outcry at an assignment concerning religious fundamentalism which a teacher assigned his class. This was accompnied by a boycott of the teacher's classes by students, and the school's placing the teacher on extended leave of absence for the best interest of the students.

5. Two further cases: one involved a teacher who, outside his classes, published books asserting the existence of a massive world-wide Jewish conspiracy, and who was ordered by his school board to stop publishing this stuff; the second involved a teacher who became publicly known as a carrier of the AIDS virus, and was subsequently assigned a non-teaching job.

These cases illustrate issues emerging in the Atlantic provinces.

(5) To Be Done:

Saskatchewan, Manitoba, and Quebec at present remain untouched. However, concerning Manitoba, we note the work done by Michael Czuboka, Why It's Hard to Fire Johnny's Teacher: The Status of Tenured Teachers in Manitoba and Canada, Winnipeg, Communigraphic/Printers Aid Group, 1985. This lists: (a) arbitration and court cases in Manitoba: teacher dismissals and attempted dismissals (1965-1975), 12 cases listed, 8 discussed; and (b) the same, for 1976-1985, 13 cases listed, 12 discussed.

PART III: TENTATIVE INTERPRETIVE COMMENTS

What do these findings mean for the original proposal?

These enquiries are part of the first stage of our research, namely to identify the universe of data and specificially if possible to inventory Board of Reference (or equivalent) decisions within each of the several provincial jurisdictions. On the basis of this survey, we hope to select for detailed investigation perhaps six cases. Those cases would be selected for investigation which showed local communities putting pressure on school boards, or being thought by school boards to be putting pressure on them, to penalize and correct "unconventional" or "contentious" behaviour by teachers. It is clear from our enquiries to date that this community pressure does sometimes exist. The law relating to employee misconduct both in general and as applied in Board of Reference cases, clearly permits school boards to discipline or even to dismiss teachers whose acts cast into disrepute the school and the education system. This rubric covers conduct both on-the-job and off-the-job which seriously upsets the community or constituency whose parents send their children to the school and whose taxes pay for it. Hence an expression of "public indignation", and a concern for the reputation of the school system, would be reasonable grounds for disciplining and sometimes dismissing a teacher. At the same time, however, this community control seen s to be reduced, and itself forced to be reasonable, by the Board of Reference appeal procedures and the decisions of these Boards. School boards must not be too responsive to public pressures. Hence, the role of the community is very much muted in the Board of Reference decisions. Indeed, it seems generally not to be mentioned. It comes in when a teacher is considered by his/her behaviour to cast the school and the education system into disrepute,

when a teacher is considered not to be a good role model for children (off-the-job conduct is relevant here), and when denominational rights are in issue. Criminal charges and convictions are relevant to the first two of these concerns. Apart from these three concerns, however, unconventional or contentious behaviour, provided it is legal, does not seem as such to have played much part at the Board of Reference level, at least over the past 20-odd years. If the teacher's behaviour, whether conventional or unconventional, has directly interfered with performance of his/her teaching duties, or has threatened the welfare of the children in the teacher's care, then the school board has been expected, by Boards of Reference as well as by others, to act. Hence we find that incompetence, disabling conduct, and insubordination are the commonest reasons for dismissal proferred by school boards. The predominant value supported by these decisions, indeed, seems to be respect for and obedience to authority. Provided an order or policy can be shown to be within the school board's jurisdiction, a teacher is expected to obey it without publicly criticizing or otherwise obstructing the school board. If a teacher believes that an order or policy is wrong, he or she is expected to follow official procedures, to go through proper channels, in making objection to the order or policy. Complaining to the public media is not regarded as a proper procedure. Given the strong presence of this value, we would expect that the unconventional or contentious teacher, i.e. the person who for better or for worse upsets the local community by following different standards, would be nudged out of the teaching profession or job by subtle pressures long before the dismissal became a matter for a Board of Reference. The obstreperous would be unhappy in the job, and would depart for more congenial occupations anyway. In addition, the down-playing of public criticism encourages teachers and administrators to "let sleeping dogs lie", to avoid stirring up matters to the point that the public becomes involved and excited. Hence, a fair amount of "deviation"

will be allowed to occur provided it is discreetly and quietly done, and that respect for authority is at least apparently preserved. "Don't rock the boat," thus becomes an operative value, followed by teachers and principals as much as by anyone.

Boards of Reference serve primarily to ensure that School Boards follow fair procedures when they choose to dismiss teachers. They must have good reasons -- not mere whimsy or fear of poublic criticism -- for their decisions, and they must give the teacher a full chance to present his/her side of the story. If a teacher is alleged to have misbehaved in a certain way, he/she must really have acted as alleged. School boards are expected to err on the side of generosity to the teacher, but to put first the welfare of the students. If the school boards do all this, their decisions to suspend or to dismiss a teacher are more than likely to be upheld by the Board of Reference. In practice, the statistics gathered to date for B.C., Alberta, and Ontario suggest a preponderance of outcomes roughly two in favour of the school board to one in favour of the teacher. This proportion suggests, incidently, that Boards of Reference are both necessary to ensure fairness and fairly successful in doing so, at least in terms of the values of the law.

Bibliography

Arons, S. (1986). Compelling Belief: The Culture of American Schooling, Amherst, Mass: The University of Massachusetts Press.

Baron, G., & Tropp, A. (1961). "Teachers in England and America," in A.H. Halsey, J. Fload, and C.A. Anderson (eds.), Education, Economy and Society. New York: Free Press.

Bercuson, D., & Wertheimer, D. (1987). A Trust Betrayed: The Keegstra Affair. Toronto: McClelland-Bantam, Inc. (Seal Books). (Originally published Toronto: Doubleday, Canada, 1985).

Blumer, H. (1986). Symbolic Interactionism: Perspective and Method. Berkeley: University of California Press. (Orig. publ. 1969.)

Michael Czuboka, (1985). Why It's Hard to Fire Johnny's Teacher: The Status of Tenured Teachers in Manitoba and Canada. Winnipeg: Communigraphics/Printers Aid Group, 1985 (3rd edition).

Durkheim, E. (1964). The Division of Labour in Society, New York: Collier-Macmillan (The Free Press of Glencoe). (Orig. publ. 1933.)

Epstein, A.L. (1967). "The Case Method in the Field of Law," in A. L. Epstein, ed., The Craft of Social Anthropology, London: Tavistock Publications.

Friedenberg, E.Z. (1980). Deference to Authority: The Case of Canada. White Plains, N.Y.: Sharpe.

Gorer, G. (1956). "Modification of National Character: The Role of the Police in England," in Douglas G. Haring (ed.), Personal Character and Cultural Milieu, Syracuse, N.Y.: Syracuse University Press, 1956, 3rd rev. ed., pp. 329-339.

Hoebel E.A. (1954). The Law of Primitive Man, Cambridge (Mass): Harvard University Press.

Hoyle, Eric. (1969). The Role of the Teacher. London: Routledge and Kegan Paul.

Hurlbert, E.L., & Hurlbert, M.A. (1987). School Law under the Charter of Rights and Freedoms. Unpublished manuscript.

Mackay, A. Wayne. (1984). Education Law in Canada. Emond-Montgomery Publications Limited.

Manley-Casimir, M.E. (1982). "Canadian and U.S. Legal Traditions -- Implications for Administrative Practice." Canadian School Executive, 2:5, pp. 18-21.

Manley-Casimir, M.E., and Sussel, T.A., eds. (1986). Courts in the Classroom: Education and the Charter of Rights and Freedoms, Calgary: Detselig Enterprises Limited.

Nicholas, R. (1968). "Rules, Resources, and Political Activity," in Marc J. Swartz, ed., Local Level Politics: Social and Cultural Perspectives, Chicago: Aldine Publishing Co.

Parker-Jenkins, M., & Osborne, J.A. "Rights in Conflict: The Case of Margaret Caldwell." Canadian Journal of Education, 10:1, pp. 66-76.

Pettigrew, A.N. (December, 1979). "On Studying Organizational Cultures," Administrative Science Quarterly, 24:4, pp. 570-581.

Piddocke, S. (1968). "Social Sanctions," Anthropologica (Ottawa), N.S., 10:2, pp. 261-285.

Turner, V.W. (1957). Schism and Continuity in an African Tribe, Manchester: Manchester University Press.

Van Velsen, J. (1967). "The Case Method in the Field of Law," in A.L. Epstein (ed.), The Craft of Social Anthropology, London: Lavistock Publications.

Waller, Willard. (1965). The Sociology of Teaching. New York: John Wiley & Sons, Inc. (Science Editions). (Originally published 1932).

APPENDIX 1: Classification of Contentious Teacher Behaviour

A. Character related behaviour (this includes the teacher's failure to provide an example of self-control and rationality)
    1. alcohol abuse and drug abuse (this includes not only drunkenness, alcoholism (alcohol addiction) and drug addiction, but the promotion of drunkenness and drug-addiction in others, whether this is or is not defined as criminal behaviour)
    2. insubordination or contrary-minded behaviour
    3. personal gooming, including cleanliness, wearing beards, and attire
    4. behaviour showing signs of cruelty (whether physical or mental)
    5. use of obscene or vulgar language
    6. dishonest behaviour
    7. others (?)

B. Sex related behaviour (with students and non-students)
    1. homosexual or lesbian relationships (both public and private)
    2. cohabitation, common-law-marriage, or live-in relationships
    3. heterosexual activities outside marriage, including adultery and those resulting in pregnancy
    4. sexual exhibitionism and lewdness
    5. seduction, sexual advances, and dating students
    6. transsexuality, including sex change and transvestism
    7. others (?)

C. Unauthorized teaching activities (including those conducted outside the classroom)
    1. use of unauthorized material, e.g., sex or religion-related books, magazines, films

2. use of unauthorized strategies or methods of teaching
3. unauthorized teaching of controversial topics, issues, or subject matter
4. ideological teaching, including partisan politicking and partisan support for candidates
5. religious teaching for proselytizing purposes
6. others (?)

D. Criminal behaviour

1. serious criminal behaviour resulting in conviction
2. minor criminal behaviour resulting in conviction
3. serious criminal behaviour for which no formal charges or conviction followed
4. minor criminal behaviour for which no formal charges or conviction followed

E. Contentious conduct as citizens (political, religious, academic, and socio-personal spheres)

1. free expression (written, oral, or symbolic) - e.g., public espousal of controversial ideas or lifestyle; wearing symbolic material and religious garb; criticism of school policy, colleague, superiors
2. affiliation or association - e.g., membership in controversial political, religious, or social groups such as the KKK, neo-Nazi organizaions, and cultic societies; marriage to a notorious person
3. public activities - e.g., partisan speeches for a party or its candidate, refusal to take patriotic oaths or to participate in patriotic activities; participation in activities, including demonstrations and petitions of controversial groups
4. others (?)

F. Others (?)

RESEARCH PROJECT PUBLICATIONS, PRESENTATIONS, AND REPORTS TO DATE:

1988

Stuart Piddocke. (1988, May). [A Note On] "Master and Servant (Summary of relevant law relating to employee misconduct and especially to disreputable outside conduct". From W. A. Holdsworth, The Law of Master and Servant (1907), and Alfred Avins, Employees' Misconduct as Cause for Discipline and Dismissal in India and the Commonwealth (1968), Vancouver, B.C.

Michael E. Manley-Casimir and Stuart Piddocke. (August, 1988). Research report: Teachers' misconduct and Board of Reference decisions: The B.C. scene. Vancouver, B.C.

Michael E. Manley-Casimir and Stuart Piddocke. (1988, November). Teachers in a Goldfish Bowl: A Case of 'Misconduct'. Paper presented at the American Education Studies Association meeting in Toronto, Ontario.

Stuart Piddocke. (1988, December 2). Interim Research Report: Teacher's misconduct and Board of Reference decisions: The Alberta scene. Vancouver, B.C. [Superseded by the report dated 13 February 1989.]

Romulo F. Magsino. (1988). Compelling teacher behaviour: A study of conflicts and resolution mechanisms in the Atlantic provinces. Winnipeg, Man.

1989

Stuart Piddocke. (1989, February 13). Research Report: Teachers' misconduct and Board of Reference decisions: The Alberta scene. Vancouver, B.C. [Supersedes interim report dated 2 December 1988.]

Michael E. Manley-Casimir and Stuart Piddocke. (in press). "Teachers in a Goldfish Bowl: A Case of 'Misconduct'." To be published in Education Law.